

64-08/DPM/MAM
FREEHILL HOGAN & MAHAR, LLP
Attorneys for Plaintiff
STOLT TANKERS B.V.
(f/k/a STOLT-NIELSEN TRANSPORTATION GROUP B.V.)
80 Pine Street
New York, NY 10005
Telephone: (212) 425-1900 / Facsimile: (212) 425-1901
Don P. Murnane, Jr. (DM 3639)
Manuel A. Molina (MM 1017)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
STOLT TANKERS B.V. (f/k/a STOLT-NIELSEN
TRANSPORTATION GROUP B.V.),

08 CIV. 4382 (SAS)

Plaintiff,
-against-
GEONET ETHANOL, LLC,

**AFFIDAVIT OF
DON P. MURNANE, JR.
IN OPPOSITION TO
MOTION TO VACATE**

Defendant.

-----X

DON P. MURNANE, JR., being duly sworn, deposes and says:

1. I am a member of the law firm Freehill Hogan & Maher, LLP, attorneys representing Plaintiff STOLT TANKERS B.V. (f/k/a STOLT-NIELSEN TRANSPORTATION GROUP B.V.). I am familiar with the facts and surrounding circumstances of this case and submit this affidavit in opposition to the motion to vacate of Defendant GEONET ETHANOL LLC.
2. Attached hereto as Exhibit 1 is copy of the Verified Complaint filed in this action.
3. Attached hereto as Exhibit 2 is a copy of the June 29, 2007 Application for Registration of a Foreign Limited Liability Company which GeoNet Utilites, LLC filed with the Secretary of State of Texas.

4. Attached hereto as Exhibit 3 is a copy of an article titled, "GeoNet opens ethanol plant on St. Croix," dated October 6, 2007 that appeared on the Virgin Islands Daily News (www.virginsilandsdailynews.com).

DATED: June 27, 2008
New York, New York



DON P. MURNANE, JR.

Sworn to before me this 27th
day of June, 2008.



Manuel A. Molina
Notary Public



MANUEL A. MOLINA
Notary Public, State of New York
No. 02M06064999
Qualified In Kings County
Commission Expires Oct. 9, 2009

EXHIBIT 1

JUDGE SCHENDLIN

64-08/DPM/MAM
FREEHILL HOGAN & MAHAR, LLP
Attorneys for Plaintiff
STOLT TANKERS B.V.
(f/k/a STOLT-NIELSEN TRANSPORTATION GROUP B.V.)
80 Pine Street
New York, NY 10005
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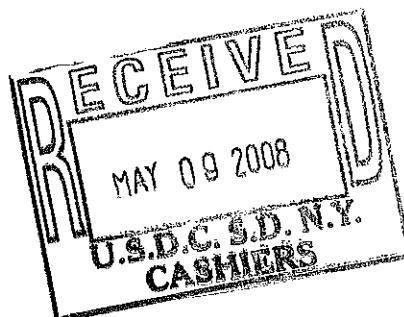
UNITED STATES DISTRICT COURT
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STOLT TANKERS B.V. (f/k/a STOLT-NIELSEN
TRANSPORTATION GROUP B.V.),

Plaintiff,
-against-

GEONET ETHANOL, LLC,

Defendant.



08 CIV. ()

VERIFIED COMPLAINT

Plaintiff STOLT TANKERS B.V. (f/k/a STOLT-NIELSEN TRANSPORTATION GROUP B.V.) (hereinafter "STOLT"), by its attorneys Freehill Hogan & Maher, LLP, as and for its Verified Complaint against Defendant GEONET ETHANOL, LLC (hereinafter "GEONET"), alleges upon information and belief as follows:

JURISDICTION

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure in that it involves a claim for breach of a maritime contract of affreightment. The case also falls within this Court's admiralty and maritime jurisdiction pursuant to 28 U.S.C. §1333, *et seq.* and / or the Arbitration Act, 9 U.S.C. §1 *et seq.* and /or §201 *et seq.* and this Court's federal question jurisdiction pursuant to 28 U.S.C. §1331.

THE PARTIES

2. At all times relevant hereto, STOLT was and still is a foreign business entity organized and existing under the laws of a foreign country, with an office in care of Stolt-Nielsen USA Inc., located at 800 Connecticut Avenue, Norwalk, CT 06854.

3. At all times relevant hereto, GEONET was and still is a business entity organized and existing under the laws of the US Virgin Islands, with an office and place of business at One Estate Anguilla, P.O. Box 2090, Kingshill, St. Croix, US Virgin Islands 00851.

NATURE OF THE CLAIMS

4. On or about June 1, 2007, STOLT entered into a Contract of Affreightment (“COA”) with GEONET for a term of one year. The COA contemplated the transportation of GEONET’s ethanol cargoes onboard STOLT’s vessels from GEONET’s facility in Saint Croix, US Virgin Islands to various ports in the Eastern Coast of the United States. The COA also required that GEONET provide for such transportation a minimum 11,000 MT of cargo twice per month. In the event that GEONET failed to nominate the guaranteed minimum cargo quantities, GEONET was required, as per the terms of the COA, to pay deadfreight charges.

5. The COA eventually came into effect and STOLT performed two liftings of GEONET’s ethanol cargoes that were carried onboard the M/T STOLT TAURUS, as per the terms of the COA.

6. On or about October 15, 2007, STOLT nominated the M/T STOLT TAURUS for the next lifting and voyage. However, in violation of the COA, GEONET failed to provide sailing instructions to STOLT. STOLT, demanding that GEONET provide the vessel with clear sailing instructions, informed GEONET that the vessel would proceed to the Bahamas and await GEONET’s further sailing orders there. GEONET failed to prove the requested orders.

7. On or about November 2, 2007, GEONET advised STOLT that it was terminating the parties' COA. GEONET's repudiation of the COA was wrongful.

8. STOLT has met all of its obligations to GEONET under the COA.

9. Over the course of performance of the COA and until GEONET's wrongful cancellation of the COA, GEONET failed to lift the guaranteed minimum cargo. Pursuant to the terms of the COA, GEONET was obligated to make deadfreight payments to STOLT totaling the sum of \$1,455,068. (See Exhibit A annexed hereto.) STOLT specifically reserves its right to amend this figure and to seek an increase in the amount of security should such sum appear to be insufficient to fully secure STOLT.

10. In addition, over the course of performance of the COA, GEONET incurred demurrage charges, which reflect the time GEONET utilized the vessel for loading, discharging and waiting orders in excess of the time allotted in the COA. The aggregate demurrage charges owed by GEONET to STOLT total the sum of \$138,531.25 and are calculated as follows: The vessel departed New York at 18:00 hours on October 23, 2007. Despite repeated requests for sailing instructions, no orders from GEONET were received until GEONET wrongfully cancelled the COA by declaring *force majeure* on November 1, 2001 at 16:30 hours. STOLT thereafter was able to fix the vessel for substitute employment, thereby mitigating its damages on the breach of contract claim. As a result, the total demurrage time equated to 8 days, 22 hours, 30 minutes at the demurrage rate of \$15,500 per day *pro rata*.

11. STOLT has demanded payment from GEONET in the sum of \$1,455,068 for its deadfreight claim and the sum of \$138,531.25 for its demurrage claim. GEONET, however, in breach of the COA with STOLT, has refused or has otherwise failed to pay the amounts demanded by STOLT.

12. Pursuant to the terms of the COA, which incorporates by reference the terms of the ASBATANKVOY charter party form, all disputes between STOLT and GEONET are subject to New York arbitration. STOLT has commenced arbitration proceedings against GEONET in New York. STOLT specifically reserves its right to arbitrate the merits of its dispute with GEONET pursuant to the terms of the COA.

RULE B ATTACHMENT

13. This action is brought in order to obtain security in favor of STOLT in respect to its deadfreight and demurrage claims against GEONET, including but not limited to interest, STOLT's anticipated attorneys' fees and costs in the arbitration, all of which are awardable by the arbitrators pursuant to the COA.

14. After investigation, Defendant GEONET cannot be "found" within this District for the purpose of Rule B of the Supplemental Rules of Certain Admiralty and Maritime Claims, but Plaintiff is informed that Defendant has, or will shortly have, assets within this District comprising, *inter alia*, cash, funds, credits, debts, wire transfers, accounts, letters of credit, freights, sub-freights, charter hire and/or sub-charter hire, of, belonging to, due or for the benefit of Defendant GEONET at, moving through, or being transferred and/or wired to or from banking institutions or such other garnissees who may be served with a copy of the Process of Attachment issued herein.

15. As nearly as presently can be computed, the total amount sought to be attached pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims by STOLT against GEONET includes:

- (a) STOLT's claim for outstanding deadfreight in the sum of \$1,455,068.00;
- (b) STOLT's claim for outstanding demurrage in the sum of \$138,531.25;

- (c) Interest in the amount of \$430,271.75, calculated on the above sum at the rate of 9% per annum, the statutory interest rate in the State of New York, for three years, the estimated time it will take to obtain a final arbitration award; and
- (d) Legal fees, arbitrators' fees, and costs which are estimated to be in the sum of \$150,000.00.

16. Based upon the foregoing, the total amount STOLT seeks to attach in this action, pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, is **\$2,173,871.00**.

W H E R E F O R E, Plaintiff STOLT TANKERS B.V. (f/k/a STOLT-NIELSEN TRANSPORTATION GROUP B.V.) prays:

- a. That process in due form of law according to the practice of this Court may issue against Defendant GEONET ETHANOL, LLC, citing it to appear and answer the foregoing, failing which a default will be taken against it for the principal amount of the claim of \$1,593,599.25, plus interest, costs and attorneys' fees;
- b. That if the Defendant cannot be found within this District pursuant to Supplemental Rule B, all tangible or intangible property of the Defendant as described herein, up to and including the amount of the claims of **\$2,173,871.00** be restrained and attached, including, but not limited to any cash, funds, credits, debts, wire transfers, accounts, letters of credit, freights, charter hire, sub-charter hire, and/or other assets of, belonging to, due, held or being transferred to or for the benefit of the Defendant at, moving through, or being transferred and/or wired to or from banking institutions or such other garnishees who may be served with a copy of the Process of Attachment issued herein;

- c. That the Court enter an order directing Defendant to appear and respond in arbitration as required, or, to the extent an award is rendered against the Defendant, to confirm that award as a judgment of this Court; and
- d. That Plaintiff have such other, further and different relief as this Court may deem just and proper.

Dated: New York, New York
May 9, 2008

FREEHILL HOGAN & MAHAR, LLP
Attorneys for Plaintiff
STOLT TANKERS B.V (f/k/a/ STOLT-NIELSEN
TRANSPORTATION GROUP B.V.)

By:



Don P. Murnane, Jr. (DM 3639)
Manuel A. Molina (MM 1017)

ATTORNEY VERIFICATION

State of New York)
) ss.:
County of New York)

Manuel A. Molina, being duly sworn, deposes and says:

1. I am an attorney with the law firm of Freehill Hogan & Mahar, LLP, attorneys for the Plaintiff in this action. I have read the foregoing Verified Complaint and know the contents thereof, and the same is true to the best of my knowledge, information and belief.
2. The sources of my information and the grounds for my belief are communications from our client and documents provided by our client regarding this claim.
3. The reason this verification is made by an attorney and not by the Plaintiff is because the Plaintiff is a foreign entity, none of whose officers are presently within the State of New York.



Manuel A. Molina

Sworn to before me this
1 th day of May, 2008



NOTARY PUBLIC

JOAN SORRENTINO
Notary Public, State of New York
No. 01SO6067227
Qualified in New York County
Commission Expires December 3, 2009

EXHIBIT A

EXHIBIT 2

Form 304**(Revised 1/06)**

Return in duplicate to:
 Secretary of State
 P.O. Box 13697
 Austin, TX 78711-3697
 512 463-5555
 FAX: 512/463-5709
Filing Fee: \$750



This space reserved for office use.

FILED
 In the Office of the
 Secretary of State of Texas

JUN 29 2007

Corporations Section

**Application for
 Registration
 of a Foreign Limited
 Liability Company**

1. The entity is a foreign limited liability company. The name of the entity is:

GeoNet Utilities, LLC

2A. The name of the entity in its jurisdiction of formation does not contain the word "limited liability company" or "limited company" (or an abbreviation thereof). The name of the entity with the word or abbreviation that it elects to add for use in Texas is:

2B. The entity name is not available in Texas. The assumed name under which the entity will qualify and transact business in Texas is:

3. Its federal employer identification number is: 66-0687089

Federal employer identification number information is not available at this time.

4. It is organized under the laws of: (set forth state or foreign country) U.S. Virgin Islands

and the date of its formation in that jurisdiction is: 09/12/2006

mm/dd/yyyy

5. As of the date of filing, the undersigned certifies that the foreign limited liability company currently exists as a valid limited liability company under the laws of the jurisdiction of its formation.

6. The purpose or purposes of the limited liability company that it proposes to pursue in the transaction of business in Texas are set forth below. The entity also certifies that it is authorized to pursue such stated purpose or purposes in the state or country under which it is organized.

Professional services, including without limitation, administrative, accounting, finance, engineering and logistic services.

7. The date on which the foreign entity intends to transact business in Texas, or the date on which the foreign entity first transacted business in Texas is: 06/01/2007

mm/dd/yyyy

8. The principal office address of the limited liability company is:

One Hibiscus Alley, PO Box 6347 St. Thomas
Address *City*

VI US VI 00804-6347
State *Country* *Zip/Postal Code*

RECEIVED**JUN 29 2007****Secretary of State**

Complete item 9A or 9B, but not both. Complete item 9C.

9A. The registered agent is an organization (cannot be entity named above) by the name of:
Capitol Corporate Services, Inc.

OR

9B. The registered agent is an individual resident of the state whose name is:

First Name	M.I.	Last Name	Suffix
800 Brazos, Suite 400	Austin	TX	78701
Street Address	City	State	Zip Code

10. The entity hereby appoints the Secretary of State of Texas as its agent for service of process under the circumstances set forth in section 5.251 of the Texas Business Organizations Code.

11. The name and address of each governing person is:

NAME OF GOVERNING PERSON (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
J. Brent		Baker		
First Name	M.I.	Last Name	Suffix	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
ADDRESS OF GOVERNING PERSON				
One Hibiscus Alley, PO Box 6347	ST. THOMAS	VI	00804-6347	
Street or Mailing Address	City	State	Country	Zip Code
NAME OF GOVERNING PERSON (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
Phil	A.	Dalton		
First Name	M.I.	Last Name	Suffix	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
ADDRESS OF GOVERNING PERSON				
One Hibiscus Alley, PO Box 6347	St. Thomas	VI	00804-6347	
Street or Mailing Address	City	State	Country	Zip Code
NAME OF GOVERNING PERSON (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
First Name	M.I.	Last Name	Suffix	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
ADDRESS OF GOVERNING PERSON				
Street or Mailing Address	City	State	Country	Zip Code

Supplemental Provisions/Information

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

Effectiveness of Filing (Select either A, B, or C.)

A. This document becomes effective when the document is filed by the secretary of state.

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

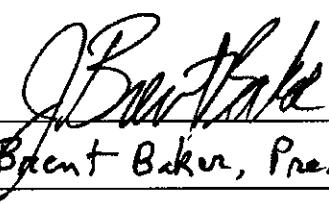
C. This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date: 06/25/2007


J. Brent Baker
J. Brent Baker, President

Signature and title of authorized person on behalf of the foreign entity

EXHIBIT 3

The Best of the Virgin Islands



Business directory keyword search:

Classifieds

- General
- Real Estate
- Employment
- Cars
- Boats & Marine
- Personals
- Submit Classified Ads
- Submit Island Trader Ads
- Upload By Direct Send
- Upload Legal Notice
- Upload Obituaries Notice

Newspaper Sections

- Home
- Business
- Sports
- Features
- Editorial Opinion
- Obituaries
- Records
- Local Calendar
- Properties in Paradise
- Business Directory
- Entrée Island Eating
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- Contact us
- Archive

Special Investigative Report UVI Tech Park



What is RSS?

Advertise with us

TOURISM INFORMATION

Virgin Islands Drivers Manual

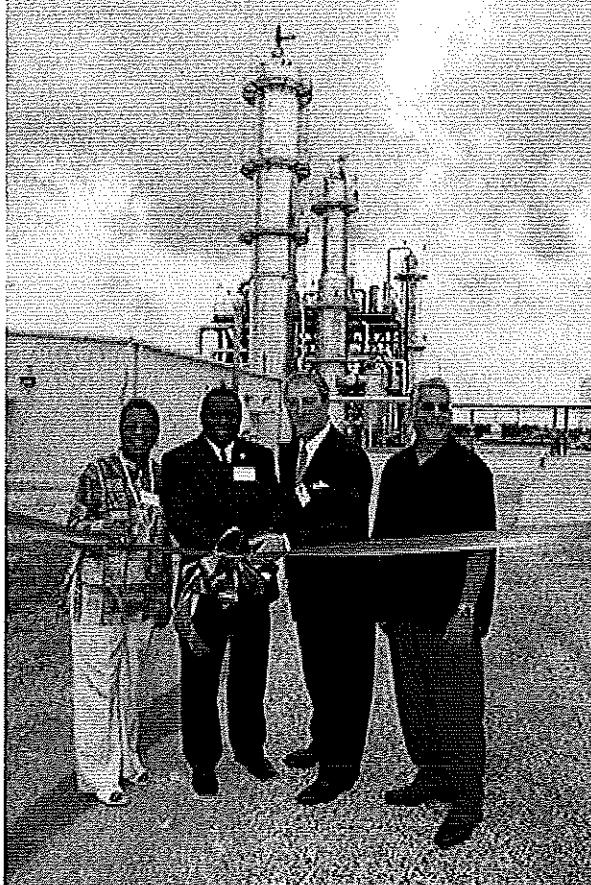
Special Supplements

- Men Today 2008
- Best of the V.I. 2008 on St. John
- Best of St. Croix 2008
- Carnival 2008
- Best of the VI 2008
- AARP Navigator
- Love City Trader
- On the Water
- How to Guide 2007
- Brides
- Health Mind & Body
- Best of VI Ballot 2008

Full Story

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GeoNet opens ethanol plant on St. Croix
By AESHA DUVAL
Saturday, October 6th 2007



Daily News Photo by CRISTIAN SIMESCU Delegate to Congress Donna Christensen, left, Lt. Gov. Gregory Francis, GeoNet Ethanol president Brent Baker and Sen. James Weber III Inaugurate the new GeoNet Ethanol Dehydration Unit.

ST. CROIX - GeoNet president Brent Baker hailed St. Croix as the perfect location for the company's operations during a dedication and ribbon-cutting ceremony on Friday for GeoNet Ethanol's new St. Croix facility.

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- › [USVI Drivers Manual](#)
- › [weekend](#)
- › [Tropical Homes](#)
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- › [Careers and Business](#)
- › [Crucian Trader](#)
- › [Good Health Care Guide](#)
- › [How to Guide St Croix](#)
- › [Women Today](#)
- › [Back to School](#)
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bags

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The company announced in August that it received its first shipment of 5 million gallons of ethanol at its St. Croix facility. The shipment is a milestone for GeoNet, which formed in November 2005 to meet the growing demand for ethanol in the United States. Its first shipment of ethanol went out last month, officials said Friday.

Ethanol, a grain alcohol derived from fermented corn or sugar cane, is used in the United States as a fuel additive to oxygenate gasoline.

GeoNet gets its ethanol from Brazil. Once received, the company distills out the clear liquid's remaining water. The final dehydrated product will be ready to oxygenate gasoline and will be ready to be shipped to the east and west coasts of the United States.

The company expects to receive two shipments a month and plans to ship about 100 million gallons of dehydrated ethanol to the mainland each year.

Baker said St. Croix was chosen as the site because of its location between two of the world's largest ethanol producers: North and South America.

"When we were scouting for locations, and we looked at places in the Caribbean and at North and South American and African countries, the U.S. Virgin Islands was, without a doubt, the best location," Baker said.

Baker said because of St. Croix's size there is potential for growth and the introduction of more renewable-energy companies to the island.

"Our mission is for GeoNet to become as well known as HOVENSA and Cruzan Rum," Baker said. "We can be the preferred supplier of renewable fuel in the nation."

The demand for ethanol in the United States has grown since the 1990s, mainly because of government mandates.

In 1990, amendments to the Clean Air Act mandated the sale of oxygenated fuels in areas with unhealthy levels of carbon monoxide.

In August 2005, President Bush signed the Energy Policy Act that further encouraged the use of cleaner and alternative fuels.

U.S. Delegate to Congress Donna Christensen said Congress is poised to offer more support for the use of alternative fuels.

"I believe the success of this project will be seen very quickly," Christensen said.

Lt. Gov. Gregory Francis said the government is hopeful that the ethanol industry continues to grow and he pledged to continue offering support to GeoNet and other companies interested in investing in St. Croix.

"We are committed to being business friendly," Francis said. "We all know that St. Croix's economy has been depressed, but the opening of this plant is a signal to the world that St. Croix means business."

Baker said GeoNet has invested more than \$100 million in the development of its St. Croix-based ethanol business. The



Baker





company - which is a beneficiary of the V.I. Economic Development Commission tax incentive program - employs 26 full time employees and several independent contractors.

The company is leasing a 13-acre Industrial site from St. Croix Renaissance that was underutilized. The facility is on the south shore east of Rohlsen Airport and along the western border of HOVENSA.

- Contact Aesha Duval at 774-8772 ext. 458 or e-mail aduval@dailynews.vi.

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Section Headlines

- DeJongh outlines plans for V.I.-Diageo deal »
- Friends mourn former V.I. senator and philanthropist Sidney Lee »
- Heated cook-off yields final member of V.I. Culinary Team »
- V.I.'s Habitat for Humanity joins forces with NeighborWorks »
- Francis, Benta to temporarily fill top slots in Police Department »
- U.S. House measure could put Virgin Islands icons in history books »
- Habitat for Humanity executive director Dianne Wells to step down from post »

- Tropical wave brings wind and rain »
- Health buys two minivans for HIV testing »
- Trial begins for man charged with stealing from employer »
- Man gets five years for Gamle Gade burglary »
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- Operation hauls in 10,000 marijuana plants »
- Man, 18, charged in armed robbery »
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